

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD LEE CANADA,  
  
Plaintiff,  
  
v.  
  
PRISON WARDEN MULE CREEK  
STATE PRISON, et al.,  
  
Defendants.

No. 2:23-cv-2824 CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking injunctive relief under the Eighth Amendment. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). See 28 U.S.C. § 636(c).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a  
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 Under 42 U.S.C. § 1997e(a) “[n]o action shall be brought with respect to prison conditions  
7 under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail,  
8 prison, or other correctional facility until such administrative remedies as are available are  
9 exhausted.” In his complaint, plaintiff admits there are administrative remedies with respect to  
10 plaintiff’s claims and that he has not exhausted them. Because it is clear on the face of plaintiff’s  
11 complaint that he has not exhausted available administrative remedies, this action must be  
12 dismissed for failure to state a claim upon which relief can be granted. Albino v. Bacca, 747  
13 F.3d. 1162, 1166 (9th Cir. 2014)

14 In accordance with the above, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 5) is granted.  
16 2. The Clerk of the Court assign a district court judge to this case.

17 IT IS HEREBY RECOMMENDED that this action be dismissed for plaintiff’s failure to  
18 exhaust available administrative remedies.

19 These findings and recommendations are submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
21 after being served with these findings and recommendations, plaintiff may file written objections  
22 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings  
23 and Recommendations.” Plaintiff is advised that failure to file objections within the specified

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time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 2, 2024



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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